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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,028	02/06/2004	Kan Frankic Fan	14329US02	7734
23446 7590 12/23/2008 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				
EXAMINER				
MAL, KEVIN S				
ART UNIT		PAPER NUMBER		
2456				
MAIL DATE		DELIVERY MODE		
12/23/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/774,028	Applicant(s) FAN ET AL.
Examiner KEVIN S. MAI	Art Unit 2456

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-32.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Bunjob Jaroenchonwanit/
Supervisory Patent Examiner, Art Unit 2456

/K. S. M./
Examiner, Art Unit 2456

Continuation of 11. does NOT place the application in condition for allowance because: The arguments are not persuasive.

Applicant argues that Craft and Diamant fail to disclose the protocol stack being connected to the intermediate driver via miniports. It is noted that in the specification elements 260 and 280 of the figure are only ever disclosed to be virtual miniports. Examiner disagrees because Craft and Diamant discloses the claimed invention except for the miniport's being between the stack and the intermediary driver. It would have been obvious to one having ordinary skill in the art at the time the invention was made to insert the miniports between the stack and the intermediary driver, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Applicant further argues that Craft does not disclose a third set comprising one or more network interface cards that are not capable of providing an offload path. Applicant states that perhaps, a particular INIC may be used to provide an upload path, however it is still capable of providing an offload path. However, Examiner asserts that in the scenario where the INIC is only used to provide an upload path it is effectively the same as not being capable of providing an offload path.

Applicant further argues that Craft does not mention iWARP and thus cannot teach iWARP. Examiner disagrees. As the Examiner understands iWARP is an update of RDMA, and RDMA is essentially a protocol that allows data to move directly from the memory of one computer into that of another without involving the operating systems. Craft discloses in column 3 lines 43-47 that the INIC chooses whether to send a packet to the host memory or to send the packet data directly to a destination in storage. Wherein the situation where the INIC directly sends to the destination in storage is seen to be RDMA traffic. Thus it is seen that RDMA is obvious in view of Craft, and accordingly iWARP is obvious in view of Craft.

Applicant further argues that Craft does not disclose layer 2 load balancing. Examiner disagrees. Column 6 lines 35-37 of Craft discloses that the port aggregation switch may change the port selection for load balancing purposes. To the examiner it is seen that such an action would cause the system to load balance throughout all the layers.